NO. 80-1073

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

---

JOSEPH N. MARÇAL, III,
Appellant,

versus

STATE OF LOUISIANA,
Appellee.

---

On Appeal from the Supreme Court of
The State of Louisiana

---

# OPPOSITION TO MOTION TO DISMISS

---

F. IRVIN DYMOND
Dymond, Crull & Castaing
Counsel for Appellant
1220 NBC Building
New Orleans, LA. 70112
Telephone: 504/581-7700

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES CITED..... i

STATEMENT OF THE
OPPOSITION AND ARGUMENT..... 1

CONCLUSION.....11

CERTIFICATE OF SERVICE.....12

TABLE OF AUTHORITIES CITED

CASES:

JACKSON v. VIRGINIA,
443 U.S. 307, 99 S.Ct.
2781 (1979).....3,4,5,6,7,8

STATE v. ROY,
La.S.Ct. No. 80-KA-1513
(Jan. 26, 1981).....7,8

CONSTITUTIONAL AND
STATUTORY PROVISIONS:

LOUISIANA CONSTITUTION OF 1974:
Art.5, Sec. 5(C),
La. Const. 1974.....3,6,8

NO. 80-1073

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JOSEPH N. MARÇAL, III,
Appellant,

versus

STATE OF LOUISIANA,
Appellee.

On Appeal from the Supreme Court of
The State of Louisiana

# OPPOSITION TO MOTION TO DISMISS

## STATEMENT OF THE OPPOSITION AND ARGUMENT

The basis for the State of Louisiana's Motion To Dismiss rests upon two false assumptions. One false assumption, as noted at page 4 of the State's Motion To Dismiss is "...that in the original majority opinion rendered by the Supreme

Court of Louisiana on appellant's case there is made no express mention of either Article 5, Section 5(C) of the State Constitution or the effect of the Jackson decision thereupon." The other pivotal false assumption follows in the next sentence at page 4 of the State's Motion, where it is noted additionally, "Nor was review under Jackson standard urged upon that Court by appellant in his original brief."

The foregoing false assumptions are pivotal to the State's position. The State reasons from these two falsities that, because appellant made "...no express mention of either Article 5, Section 5(C) of the State Constitution or the effect of the Jackson decision thereupon...", and that appellant "...raised the Jackson issue for the first time in a limited

rehearing granted to consider a totally different issue,...", the "...federal question sought to be reviewed in this case was neither properly raised before the Supreme Court of Louisiana nor expressly passed on by that Court. This appeal should, therefore, be dismissed." (See Motion To Dismiss at 4-5)

Not only did the Louisiana Supreme Court, in regards to appellant's case then before it, expressly declare that it was following the mandate of Article 5, Section 5(C) of the Louisiana Constitution of 1974, in declaring that its "...jurisdiction is limited to questions of law;...", (See Appellant's Appendix "A" at A-4), but the Louisiana Supreme Court itself ordered both appellant and the State of Louisiana to submit supplemental briefs on Jackson v. Virginia, 443

U.S. 307, 99 Sup.Ct. 2781 (1979), as it applied to the above State of Louisiana constitutional provision and appellant's case. Oral argument before the Louisiana Supreme Court was had on December 18, 1979, and each party was given until December 28, 1979, to submit supplemental briefs. On December 28, 1979, appellant timely submitted his supplemental brief, the State of Louisiana choosing not to submit anything. (See Opposition Appendix "A" at 1-38 for Appellant's Supplemental Brief After Oral Argument; and see Opposition Appendix "B" at 1 for Extract Of Docket Book of Louisiana Supreme Court)

This Court's attention is directed to Appellant's Supplemental Brief After Oral Argument at 1-38 of Opposition Appendix "A". Please note that it was filed timely on December 28, 1979, as per orders of the Louisiana Supreme Court as reflected

in the Extract Of Docket Book of said Court which is found herein at 1 of Opposition Appendix "B". Also, please note that the supplemental brief of appellant before the Louisiana Supreme Court was filed before that Court exactly one (1) month prior to the day of the original majority opinion of same Court. (See Appellant's Appendix "A" at A-1 for date of opinion) Further, the Court should note that Appellant's Supplemental Brief After Oral Argument deals almost exclusively with the Jackson decision and its effect on the Louisiana Constitution of 1974 and appellant's case.

Appellant's Supplemental Brief After Oral Argument timely filed one (1) month before the Louisiana Supreme Court's majority opinion, properly and expressly raised the issue of the Jackson standard

as it applied to the Louisiana Constitution and appellant's case.

The language of the Louisiana Supreme Court's majority opinion shows that it clearly and unequivocally refused to apply the Jackson standard, and, instead, applied Article 5, Section 5(C) of the Louisiana Constitution of 1974, as appears in the majority opinion at Appellant's Appendix "A" at A-4, as follows:

> "On appeal, this Court's jurisdiction is limited to questions of law; therefore, if there is some evidence proving the essential elements of the crime, no question of law is presented, sufficiency of the evidence being a matter to be decided by the trier of fact... (Citations omitted)..."

It was not appellant who was inspired by Justice Dennis as suggested by the State of Louisiana in its Motion To Dismiss at 4. Instead, it was Justice

Dennis who was inspired by appellant's efforts to confront the Louisiana Supreme Court with the Jackson standard.

Once the Louisiana Supreme Court refused to adopt the Jackson standard and apply it to appellant's appeal, subsequent adoption by same Court of the Jackson standard and application of same to criminal appeals in other completely unrelated cases does not somehow correct the denial to appellant of those "...elemental due process..." rights to which he was then and is now entitled. As suggested by the State of Louisiana, appellant concedes that by State v. Roy, La.S.Ct. No. 80-KA-1513 (Jan. 26, 1981), the Louisiana Supreme Court now applies the Jackson standard. However, when it was crucial to appellant, almost one (1) year to the date before State v. Roy, supra., the

Louisiana Supreme Court clearly refused to apply the then six (6) month old Jackson decision to its appellate review of appellant's case. The issue before this Court is whether or not the Louisiana Supreme Court, when timely presented with the issue of the unconstitutionality of Article 5, Section 5(C) of the Louisiana Constitution of 1974, in light of the Jackson standard, applied said standard. By its own language in its majority opinion of January 28, 1980, the Louisiana Supreme Court did not apply the Jackson standard to appellant's appeal before it. Instead, it limited its consideration to "...questions of law..." as noted herein previously.

The State has presented in its Motion To Dismiss certain allegations as to the evidence presented in the judge-trial of

appellant which resulted in his initial conviction. Without the four (4) volume typewritten record of the trial which exceeds one thousand (1,000) pages, this Court cannot judge the merits of such evidence. Because of the State of Louisiana's mentioning of same evidence, appellant would show that these allegations made by the State of Louisiana do not, in any way, present this Court with a correct or clear picture of the evidence. The evidence shows that appellant proved his innocence. Being "...limited to questions of law...", the Louisiana Supreme Court individually or as a group of any number, did not read this one thousand (1,000) page typewritten transcript and accompanying numerous defense exhibits. Appellant credibly accounted for his presence at the time he was

supposed to have given a cash bribe. Appellant's testimony was strongly supported by businesswoman, Jo Lewis. Appellant proved, to a certainty, by his own and bank records, that the transaction parroted by the State of Louisiana's witnesses could not and did not occur. The motives of the witnesses for the State of Louisiana were also clearly proven by appellant, none of which added credit to the scenario presented by the State of Louisiana. Evidence of prosecutorial misconduct and indiscretions on the part of the trial judge need not be gone into at this point. Suffice it to note that there is much more to this than the State of Louisiana's representations would have this Court understand.

## CONCLUSION

Appellant requests that this United States Supreme Court deny the Motion To Dismiss filed by the State of Louisiana through the offices of the District Attorney for the Parish of Orleans and place this matter on the appellate docket and grant full plenary consideration of this case.

RESPECTFULLY SUBMITTED:

F. IRVIN DYMOND
Dymond, Crull, & Castaing
Attorney for Appellant
1220 NBC Building
New Orleans, LA. 70112
Telephone: 504/581-7700

CERTIFICATE OF SERVICE

I, F. Irvin Dymond, Attorney for Appellant, certify that a copy of the foregoing Opposition To Motion To Dismiss has been served upon opposing counsel by the United States Mail, First Class Postage prepaid, by depositing same in the United States mail at a receptacle therefor provided at the main post office for the City of New Orleans, Louisiana, the envelope bearing the following directions for delivery to opposing counsel:

Hon. William Guste
Attorney General of Louisiana
Attention: Criminal Division
Suite 700, 234 Loyola Building
New Orleans, Louisiana 70112

J. Kevin McNary
Assistant District Attorney
for the Parish of Orleans
619 South White Street
New Orleans, Louisiana 70119

This ___ day of April, 1981.

All parties required to be served have been serve.

F. IRVIN DYMOND
Dymond, Crull & Castaing
Attorney for Appellant
1220 NBC Building
New Orleans, LA. 70112
Telephone: 504/581-7700